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PAUL J. DHANENS AND DIANE M. DHANENS,
individuals, and Co-Administrators of the Estate of
PHILIP A. DHANENS

FILED

MAR 13 2013

FRESNO COUNTY SUPERIOR COURT
By _____ DEPUTY

SUPERIOR COURT OF CALIFORNIA

COUNTY OF FRESNO

PAUL J. DHANENS AND DIANE M.
DHANENS, individuals, and Co-Administrators
of the Estate of PHILIP A. DHANENS

Plaintiffs,

vs.

THETA CHI FRATERNITY, INC., an Indiana
corporation, individually, and t/a the Beta
Upsilon Chapter, California State University,
Fresno;
BETA UPSILON CHAPTER OF THETA CHI
FRATERNITY, individually, and as a chapter
and agent of Theta Chi Fraternity, Inc.;
THETA CHI ALUMNI CORPORATION,
BETA UPSILON CHAPTER; a California
corporation, individually and as agent of Theta
Chi Fraternity, Inc.;
LEONARD SERRATO, individually, and as an
agent of Theta Chi Fraternity, Inc. and Beta
Upsilon Chapter of Theta Chi Fraternity;
AARON RAYMO, individually, and as an
agent of Theta Chi Fraternity, Inc. and Beta
Upsilon Chapter of Theta Chi Fraternity;

Case No. 13CECG 00801

**COMPLAINT FOR WRONGFUL
DEATH AND SURVIVAL ACTION
BASED ON:**

(1) NEGLIGENCE (Failure to Manage
and Supervise);

(2) VIOLATION OF MATT'S LAW,
FRESNO SOCIAL HOST ORDINANCE,
THE STANDARDS FOR STUDENT
CONDUCT, AND THE FRESNO STATE
HANDBOOK;

(3) NEGLIGENCE AND NEGLIGENCE
PER SE (Hazing and Social Host);

(4) NEGLIGENCE (Assumed Duties);

(5) NEGLIGENCE (Duty to Prevent
Harm);

BY FAX

JURY TRIAL DEMANDED

1 CHARLES AUSTIN-FISHER, individually,
2 and as an agent of Theta Chi Fraternity, Inc. and
3 Beta Upsilon Chapter of Theta Chi Fraternity;
4 DANIEL DUKES, individually, and as an agent
5 of Theta Chi Fraternity, Inc. and Beta Upsilon
6 Chapter of Theta Chi Fraternity;
7 SCOTT LONG, individually, and as an agent of
8 Theta Chi Fraternity, Inc. and Beta Upsilon
9 Chapter of Theta Chi Fraternity;
10 DANIEL BAKER, individually, and as an agent
11 of Theta Chi Fraternity, Inc. and Beta Upsilon
12 Chapter of Theta Chi Fraternity; and
13 DOES 1 through 25, inclusive, individually, and
14 as agents of Theta Chi Fraternity, Inc. and Beta
15 Upsilon Chapter of Theta Chi Fraternity;

16 Defendants.

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1 disregarded the safety of students and others by refusing to make meaningful changes to its
2 flawed safety and management policies and practices despite overwhelming studies, books,
3 professional reports and training programs, information, and documented cases of serious injury
4 and death demonstrating the critical, yet unmet, need for change. Theta Chi's former Executive
5 Director long ago published that bid night is one of the "three deadly nights" for hazing in
6 fraternities when the ritual includes the provision of alcohol to pledges, as it was in the very
7 misconduct resulting in Philip's death.

8 4. Fraternity Defendants knew or should have known of the long-documented risk of
9 death and serious injury posed by fraternity traditions like the bid night ceremony that resulted in
10 the death of Philip, and Fraternity Defendants knew or should have known that members
11 continued such traditions notwithstanding fraternity and/or university risk management policies
12 prohibiting such conduct. Yet Fraternity Defendants deliberately/purposefully took no
13 reasonable, effective measures to enforce risk management policies or stop long-standing and
14 dangerous pledging traditions, and their acts and/or omissions therefore constituted not only
15 gross negligence and/or reckless misconduct, but also were taken in conscious disregard of the
16 dangers posed to pledges like Philip.

17 PARTIES

18 5. Plaintiff Paul J. Dhanens is Philip's natural father. Plaintiff Diane M. Dhanens is
19 Philip's natural mother. The Plaintiffs were duly appointed Co-Administrators of the Estate of
20 Philip A. Dhanens by a court of competent jurisdiction in Kern County, California, giving them
21 full legal authority to maintain this action on behalf of the Estate. This order is attached hereto
22 as Exhibit A.

23 6. The Plaintiffs bring this action for wrongful death and survival damages pursuant
24 to Cal. Code Civ. Proc. § 377.60 *et seq.*, and § 377.30 *et seq.*

25 7. Fraternity Defendants consist of three principal units – Defendants Theta Chi,
26 Theta Chi Alumni Corporation, Beta Upsilon Chapter ("Alumni Corporation") and the Beta
27 Upsilon Chapter of Theta Chi ("Beta Upsilon"). These nominally distinct entities operate as a
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1 single enterprise, with the purposes of furthering the mission of Theta Chi. Theta Chi functions
2 under the direction, control and supervision of the Theta Chi Grand Chapter.

3 8. Defendant Theta Chi is a non-profit corporation organized in the State of Indiana.

4 9. Now and at all relevant times, Theta Chi regularly transacts business in the State
5 of California and in Fresno County, through the chapter it established and controlled at Fresno
6 State, Beta Upsilon, and through the Alumni Corporation, which owned the fraternity house at
7 Fresno State, and through its numerous active and alumni members, who have been initiated
8 pursuant to its policies and rituals and live in the state. Theta Chi is reaping significant financial
9 revenue from students at California universities.

10 10. Defendant Beta Upsilon is an unincorporated association that is chartered,
11 governed, managed, and controlled by Theta Chi, and/or Theta Chi has the rights to exercise
12 control over the activities, assets, and members of Beta Upsilon, and Beta Upsilon is an agent of
13 and acts for, under the direction, and on behalf of Theta Chi.

14 11. Defendant Alumni Corporation is a California corporation and the owner of the
15 real property commonly known as the Theta Chi Fraternity House, 1455 E. Joyal Court, Fresno,
16 California.

17 12. Theta Chi and the Theta Chi Grand Chapter manage and control the fraternity-
18 related activities of Beta Upsilon, the Alumni Corporation, chapter officers and members of Beta
19 Upsilon, and/or Theta Chi has the right to exercise control over such entities and persons who are
20 agents of and act for, under the direction, and on behalf of Theta Chi.

21 13. Defendant Leonard Serrato was at all relevant times a member of Theta Chi and a
22 citizen of California. Defendant Serrato was the Marshal of Beta Upsilon at the time of Philip's
23 death and he authorized, requested, commanded, participated in, or ratified the hazing and/or the
24 subsequent misconduct involving Philip's incapacity and the failure to obtain the emergency
25 medical assistance needed to save his life. Defendant Serrato was at all relevant times acting as
26 an agent of and within the scope of his agency with Fraternity Defendants.

27 14. Defendant Aaron Raymo was at all relevant times a member of Theta Chi and a
28 citizen of California. Defendant Raymo was the Assistant Marshal of Beta Upsilon at the time of

1 Philip's death and he authorized, requested, commanded, participated in, or ratified the hazing
2 and/or the subsequent misconduct involving Philip's incapacity and the failure to obtain the
3 emergency medical assistance needed to save his life. Defendant Raymo was at all relevant
4 times acting as an agent of and within the scope of his agency with Fraternity Defendants.

5 15. Defendant Charles Austin-Fisher was at all relevant times a member of Theta Chi
6 and a citizen of California. Defendant Austin-Fisher was the Chaplain/Risk Management
7 Chairman of Beta Upsilon at the time of Philip's death and he authorized, requested,
8 commanded, participated in, or ratified the hazing and/or the subsequent misconduct involving
9 Philip's incapacity and the failure to obtain the emergency medical assistance needed to save his
10 life. Defendant Austin-Fisher was at all relevant times acting as an agent of and within the scope
11 of his agency with Fraternity Defendants.

12 16. Defendant Daniel Dukes was at all relevant times a member of Theta Chi and a
13 citizen of California. Defendant Dukes was the Technical Chairman of Beta Upsilon at the time
14 of Philip's death and he authorized, requested, commanded, participated in, or ratified the hazing
15 and/or the subsequent misconduct involving Philip's incapacity and the failure to obtain the
16 emergency medical assistance needed to save his life. Defendant Dukes was at all relevant times
17 acting as an agent of and within the scope of his agency with Fraternity Defendants.

18 17. Defendant Scott Long was at all relevant times a member of Theta Chi and a
19 citizen of California. Defendant Long was the Recruitment Chairman of Beta Upsilon at the
20 time of Philip's death and he authorized, requested, commanded, participated in, or ratified the
21 hazing and/or the subsequent misconduct involving Philip's incapacity and the failure to obtain
22 the emergency medical assistance needed to save his life. Defendant Long was at all relevant
23 times acting as an agent of and within the scope of his agency with Fraternity Defendants.

24 18. Defendant Daniel Baker was at all relevant times a member of Theta Chi and a
25 citizen of California. Defendant Baker was the President of Beta Upsilon at the time of Philip's
26 death and he authorized, requested, commanded, participated in, or ratified the hazing and/or the
27 subsequent misconduct involving Philip's incapacity and the failure to obtain the emergency
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1 medical assistance needed to save his life. Defendant Baker was at all relevant times acting as an
2 agent of and within the scope of his agency with Fraternity Defendants.

3 19. The true names and capacities, whether individual, corporate, associate or
4 otherwise, of Defendants DOES 1 through 25, inclusive, are unknown to Plaintiffs, who
5 therefore sue said Defendants by such fictitious names pursuant to California Code section 474.
6 Plaintiffs further allege that each of said fictitious Defendants is in some manner responsible for
7 the acts and occurrences herein set forth. Plaintiffs will amend this Complaint to show these
8 Defendants' true names and capacities when the same are ascertained, as well as the specific
9 manner in which each fictitious defendant is responsible.

10 20. At all times mentioned in this Complaint, each Defendant was an agent, manager,
11 director, trustee, officer, servant, employee, co-conspirator and/or joint venturer of each
12 remaining defendant, and was at all times acting within the course and scope of that agency,
13 management, direction, trust, office, servant, employment, co-conspiracy and/or joint venture.

14 VENUE

15 21. Venue is appropriate in Fresno County because the Alumni Corporation is a
16 California corporation and owner of the property where the acts occurred, at least one of the
17 individual Defendants is a permanent resident of Fresno County and the acts that give rise to this
18 action occurred in Fresno County.

19 GENERAL ALLEGATIONS/PHILIP'S DEATH

20 22. Philip Dhanens matriculated at Fresno State as a freshman in the fall of 2012,
21 having graduated that spring from Garces Memorial High School in Bakersfield, California. At
22 6'5" and over three hundred pounds, Philip earned the nickname "Big Phil," and he was known
23 for his bear hugs. Philip, by his size and his caring and giving nature, made a lasting impression.
24 He was a member of the Garces football team, a band member, playing both trombone and tuba,
25 and he and his long-time girlfriend were senior prom king and queen. Philip was the youngest of
26 three brothers and a beloved son. Philip was deeply devoted to his faith.

27 23. Theta Chi recruits new undergraduate members at Fresno State through its local
28 authorized chapter, Beta Upsilon, and members pay dues and convey other financial benefits to

1 Theta Chi. Like other national fraternities, Theta Chi knowingly permits its name to be
2 advertised on Fresno State's website, which promotes the fraternity, fraternity membership, and
3 associated Greek life.

4 24. In order to become Theta Chi members, students must first receive a bid from the
5 fraternity, and then must participate in a pledge or initiation process authorized, requested,
6 commanded, participated in, or ratified by the Defendants, individually, and/or through their
7 agents, officers and/or members of Theta Chi and Beta Upsilon.

8 25. Shortly after leaving home and beginning his college career, the recruitment
9 process known as rush began at Fresno State, during which all fraternities affiliated with Fresno
10 State solicit new dues-paying undergraduate members for their national fraternities and local
11 chapters, such as Theta Chi and Beta Upsilon.

12 26. Rush at Fresno State began on or about August 17, 2012, and during the next two
13 weeks, Philip attended multiple events that were hosted by Theta Chi.

14 27. At the end of rush, Philip was presented with and accepted a bid from Beta
15 Upsilon to join Theta Chi, along with fifteen other Fresno State students, all or many of whom
16 were under the legal drinking age.

17 28. On Friday, August 31, 2012, Philip attended a pinning ceremony at the Theta Chi
18 house in Fresno, California, to formally accept the bid and become a pledge of the fraternity.
19 The ceremony was attended by the fifteen would-be pledges, thirty to forty active Theta Chi
20 members, and Theta Chi alumni and guests. After the pinning ceremony, attendees went to out
21 to dinner, during which all members of Theta Chi were introduced and the Chapter's Executive
22 Board provided the pledges with the expectations of the fraternity followed by words of
23 encouragement. After dinner, Defendants Serrato and Raymo directed all pledges to meet at the
24 Theta Chi house.

25 29. Before returning to the Theta Chi house, Defendants Serrato, Raymo and Dukes
26 drove to a liquor store and purchased a large amount alcohol for the pledges.

27 30. Upon reconvening at the Theta Chi fraternity house, Defendants Serrato, Raymo
28 and Austin-Fisher escorted the pledges to the Chapter Room and ordered them to sit in a semi-

1 circle. Once seated, the Executive Board members presented the alcohol to the pledges, passing
2 the bottles of hard liquor, including rum, tequila and vodka, to the pledges while officers and
3 members yelled and chanted the fraternity name, encouraging the pledges to drink. The pledges,
4 including Philip, were told they were not allowed to leave the Chapter Room to join the other
5 fraternity members in the house until they drank all the alcohol in the Chapter Room. Two full
6 bottles of hard liquor were finished by the pledges within only ten minutes. The Executive
7 Board members then passed around additional bottles for the pledges to drink.

8 31. After approximately twenty minutes, Philip had become visibly incapacitated,
9 exhibiting signs of severe intoxication, including passing out and falling out of his chair and onto
10 the floor. Before he fell out of his chair, Philip was asked by fraternity members if he was
11 alright, and he answered, "No," indicating that he was experiencing conscious pain and suffering
12 and that his condition required immediate, qualified attention.

13 32. Defendants Serrato and Raymo ordered the assistance of four, still unidentified,
14 fraternity members to drag Philip to the "Drunk Room," where he was to be watched over.
15 Defendants Serrato and Raymo additionally ordered fraternity members to care for Philip.
16 Approximately twelve Theta Chi members who were referred to as the "Sober Brothers" were
17 assigned the task of watching over and caring for Philip. After depositing Philip in the "Drunk
18 Room" the other pledges continued to drink heavily. Half of the remaining pledges vomited
19 several times.

20 33. Philip was left unmonitored in the "Drunk Room" until a few hours later, when
21 fraternity members found Philip covered with his own vomit and lying motionless. Philip was
22 pale in color, and 911 was called. Emergency medical personnel and Fresno Police responded to
23 find that Philip was unresponsive and not breathing. Philip was rushed to St. Agnes Hospital for
24 treatment.

25 34. The fraternity members were evasive with the police detectives, refusing to assist
26 the investigation after receiving a text message directing the brothers to "keep everything to
27 themselves." None of the fraternity members have been willing to explain to the police why
28 Philip was abandoned for several hours as his brain swelled from alcohol poisoning. After being

1 dragged to and left helpless in the “Drunk Room,” Philip’s chance to survive the hazing slipped
2 away. Had Philip received proper care after his physical condition and the word “no” plainly
3 identified the need for emergency medical assistance, he would have survived.

4 35. The individual Defendants knew that Philip had consumed too much alcohol as a
5 result of the bid night hazing ritual, that he was ill, and that he was unable to walk or take care of
6 himself. These Defendants then undertook to make and control decisions regarding his care,
7 which amounted to no more than abandoning him on the “Drunk Room” floor.

8 36. Defendants’ unbridled loyalty to each other and Fraternity Defendants has led
9 them to refuse to cooperate with the investigation into the cause of Philip’s death and to destroy
10 evidence that would demonstrate their culpability for Philip’s death.

11 GENERAL ALLEGATIONS/BACKGROUND

12 37. It is widely published, known by, and documented in the fraternity industry that
13 this type of ritualistic evening and event, involving the provision of large amounts of alcohol, is
14 one of the so-called “three deadly nights” for pledges. Historically, numerous young students
15 seeking to join fraternities across the country have died from alcohol poisoning as a result of
16 being provided and compelled to consume alcohol at a fraternity event.

17 38. Statistics, insurance claims analyses, studies and reports, and widely known
18 incidents of catastrophic injury and death have *for decades* demonstrated the foreseeable risk of
19 dangerous injury and death from the excessive consumption of alcohol by prospective new
20 members during fraternity bid, pledge, big brother and other initiation events in which
21 participation is required for admission to the brotherhood.

22 39. Many, if not most, fraternities have had students die, or, likely, suffer numerous
23 injuries, as a result of hazing or other fraternity related activities involving the abuse and misuse
24 of alcohol. The known deaths, spanning decades of misconduct, include, without limitation:
25 Theta Chi: 1988, Sean Hickey at Rider College, 1997, Binaya Oja at Clarkson University/State
26 University of New York at Potsdam, 2001, Seth Korona at Indiana University, 2008, Harrison
27 Kowiak at Lenoir-Rhyne; Sigma Alpha Epsilon: 1997, Benjamin Wynne at Louisiana State
28 University, 2006, Jacob Stiles at Southern Methodist University, 2006, Tyler Cross at the

1 University of Texas, 2008, Carson Starkey at Cal Poly San Luis Obispo resulting from fraternity
2 hazing and the unlawful provision of alcohol during pledge tradition involving hazing, 2009,
3 Jason Wren at Kansas University, 2010, the death of George Desdunes at Cornell University;
4 Sigma Alpha Mu: 1972, Brian Cursack at the University of Maryland, and 2008, Brett Griffin at
5 the University of Delaware; Sigma Chi: 1982, two pledges died at the University of Virginia;
6 Lambda Chi Alpha: 1985, the death of a rushee at the University of Missouri, 1988, the death of
7 a pledge, James Callahan, at Rutgers University, 1997, and the deaths of two pledges, Brian
8 Sanders and Brian Pierce, at the University of California, Los Angeles, as a result of hazing and
9 the unlawful provision of alcohol to pledges by fraternity members; Phi Delta Theta, 1993, the
10 death of a pledge, Chad Saucier, at Auburn University, and, 1998, the death of Courtney Cantor
11 at the University of Michigan who fell following pledge activities involving her sorority and Phi
12 Delta Theta; Sigma Chi, 1998, the suicide death of a pledge at the University of Mississippi who
13 had allegedly been hazed, and, 2004, the death of a pledge, Blake Hammontree, at the University
14 of Oklahoma, who was found dead on the fraternity floor at an alcohol related pledge event; Phi
15 Kappa Tau, 2007, the death of Gary DeVercelly at Rider University; Tau Kappa Epsilon, 2010,
16 the death of Samuel Mason at Radford University.

17 40. Theta Chi had, at all times relevant hereto, access to and specialized knowledge of
18 information, research, and claims histories confirming a staggering number of serious injuries
19 and deaths from Greek activities, and the foreseeable risk of further injury and death should its
20 activities, traditions, and risk management strategies continue without meaningful change.

21 41. In the late 1980s, the Fraternity Insurance Purchasing Group ("FIPG"), a
22 consortium of Greek organizations organized to coordinate their risk management strategies and
23 assist each other in the purchase of insurance, widely published that fraternities and sororities
24 were ranked by the National Association of Insurance Commissioners as the sixth worst risk for
25 insurance companies – just behind hazardous waste disposal companies and asbestos contractors.
26 The New York Times Education Editor Fred M. Hechinger reports at least 39 fraternity hazing
27 deaths occurred between 1979 and 1986. Ann Landers cites 26 deaths between 1980 and 1986.

42. In 1997, the National Interfraternity Council (“NIC”), then comprising 66 Greek national organizations with 5500 chapters on 800 campuses throughout the United States and Canada, analyzed certain risks associated with Greek organizations and housing and concluded that improper fraternity oversight of alcohol was “frighteningly pervasive.”

43. A well-known survey conducted by Harvey Wechsler of the Harvard School of Health in 2001 showed that three-quarters of fraternity and sorority members are binge drinkers. As Dr. Wechsler put it in his book on the subject “Dying to Drink,” “the single strongest predictor of binge drinking is fraternity or sorority residence or membership.”

44. The National Center on Addiction and Substance Abuse at Columbia University (“CASA”), reported in “Wasting the Best and the Brightest: Substance Abuse at America’s Colleges and Universities,” that binge drinking in Greek housing is 89% higher than it is for students in university housing, and that fraternity officers are the worst substance abusers of all, by a wide margin.

45. CASA also reports that rates of excessive drinking and the proportion of students injured as a result of drinking between 1993 and 2001 have increased.

46. Expert studies and reports demonstrate that drinking by prospective new fraternity members is particularly dangerous – and often deadly – because of the context in which these events or “rituals” occur. The prospective members – recent members of the campus community – are subject to a number of psychological and emotional forces that undermine their ability to exercise self-restraint, and render them particularly susceptible to “encouragement” to drink to excess.

47. One of these reports is by David Westol, who was CEO of Theta Chi for several years and is now a well-known and respected expert and consultant to the Greek industry on risk management and hazing issues, serving in a senior executive capacity on various Greek-related organizations. Mr. Westol concluded that, in particular, the bid night ritual is one of the “Three Deadly Nights” for prospective fraternity members. In his capacity as Executive Director of Theta Chi, Mr. Westol shared his risk management and hazing studies with the Grand Chapter of Theta Chi.

1 48. The bid night ritual, which for many years if not decades has been practiced in
2 fraternities nationwide, wherein the pledges are expected to consume alcohol, is particularly
3 deadly because of the unavoidable association between belonging and consuming the alcohol
4 that has been provided. Historically, this ritual, unique to fraternities, has resulted in the deaths
5 of numerous young pledges and likely thousands of incidents of dangerous, near-fatal
6 intoxication.

7 49. It is widely reported and well known among Greek organizations that at least one
8 student has died in fraternity pledge activities *every year* since 1970.

9 50. In 1997, the NIC passed a Resolution addressing the misuse of alcohol that, in
10 part, encourages its member fraternities to pursue alcohol-free chapter facilities.

11 51. At the 1998 Theta Chi national convention, a non-binding resolution was passed
12 to encourage the Grand Chapter to establish alcohol-free housing, which it then instituted. Later,
13 in 2008, the Grand Chapter voted to repeal the alcohol ban, clearing the way for Philip's death.

14 52. Researchers, insurance brokers, and purported experts regarding risk management
15 issues for Greek organizations credit failures in the Greek organizations' risk management
16 programs regarding crisis management, hazing, and alcohol for the high levels of injury and
17 death related to Greek organizations and their bid, pledging and initiation rituals.

18 53. Theta Chi knew or, in the exercise of reasonable care, should have known of the
19 widely publicized information, studies, and reports set forth in paragraphs above.

20 54. Theta Chi establishes and controls the processes and procedures whereby students
21 become members of the fraternity by accepting a bid from the local chapter and participating in
22 various pledge and initiation events.

23 55. In managing and controlling Beta Upsilon and its other chapters and members,
24 Theta Chi, *inter alia*, promulgates risk management policies that are applicable to all chapters
25 and members, which policies purportedly prohibit hazing and underage alcohol consumption.

26 56. Prior to the events that are the subject of this Complaint, various local chapters
27 and members of Theta Chi have been involved in numerous hazing and/or misuse of alcohol and
28 drug incidents. These include, without limitation, the death of Harrison Kowiak at Lenoir-Rhyne

1 University in 2008 from a hazing ritual in which he was “repeatedly tackled” at night and died
2 from head injuries. This particular chapter of Theta Chi was reported to have a long history of
3 hazing violations. Upon information and belief, there are other serious injuries and deaths
4 resulting from the activities by Theta Chi and its members.

5 **FIRST CAUSE OF ACTION**
6 **(Survival and Wrongful Death)**
7 **NEGLIGENCE**
8 **FRATERNITY DEFENDANTS**

8 57. The preceding allegations are re-alleged and incorporated herein.

9 58. Theta Chi, individually and through its agent, Beta Upsilon, and its officers and
10 members, owed a duty to Philip to manage and oversee the Beta Upsilon operations and the
11 activities of its members in a reasonably prudent manner, and/or assumed such a duty.

12 59. Theta Chi, individually and through its agent, Beta Upsilon, and its officers and
13 members, and Beta Upsilon also owed a duty to Philip to manage the provision and use of
14 alcohol in connection with recruitment, pledge, and bid night in a reasonably prudent manner,
15 and/or assumed such a duty.

16 60. Fraternity Defendants breached these duties, and were negligent, by, *inter alia*:

17 (a) relying on underage, untrained members, who had themselves participated
18 in bid night and/or other initiation events involving alcohol and who had taken oaths of
19 secrecy and loyalty to the brotherhood, to manage Beta Upsilon and its activities and to
20 enforce risk management policies;

21 (b) failing adequately to train Beta Upsilon and chapter members and officers
22 on risk management, alcohol policies, crisis management policies, and other management
23 policies and procedures;

24 (c) failing to provide effective supervision and control over the Beta Upsilon
25 officers and members and the pledge activities and rituals authorized, directed, and/or
26 participated in by those officers and members;

27 (d) failing to implement reasonable measures to enforce risk management
28 policies prohibiting the use of alcohol during all recruitment activities;

1 (e) failing to provide reasonable safeguards and restrictions and controls in
2 place to prevent underage drinking and excessive drinking, and responsible supervision
3 of any underage persons serving alcohol to pledges;

4 (f) failing to implement reasonable measures to prohibit the excessive use and
5 consumption of alcohol during recruitment and pledging activities including, but not
6 limited to, the bid night ritual;

7 (g) failing to implement reasonable measures to enforce California state laws,
8 Matt's Law, the Standards for Student Conduct, the Fresno State Student Handbook, and
9 Theta Chi's own policies prohibiting underage drinking and hazing;

10 (h) failing to implement reasonable measures to stop underage drinking and
11 hazing activities which it knew, or should have known, were occurring within Beta
12 Upsilon;

13 (i) failing to discipline Beta Upsilon members for engaging in underage
14 drinking, orchestrating and executing the bid night ritual, and hazing activities; and

15 (j) were otherwise negligent.

16 61. As a direct and proximate result of Fraternity Defendants' negligence, Philip died,
17 and his beneficiaries suffered and will suffer in the future financial support that Philip would
18 have contributed to the family during their life expectancy; the loss of gifts and benefits that they
19 would have expected to receive from Philip; funeral and burial expenses; the reasonable value of
20 household services that Philip would have provided; the loss of Philip's love, companionship,
21 comfort, care, assistance, protection, affection, society, moral support, and the loss of Philip's
22 training and guidance.

23 62. As a further direct and proximate result of Fraternity Defendants' negligence, the
24 Estate of Philip Dhanens incurred medical expenses and lost earnings.

25 63. Fraternity Defendants are jointly and severally liable for their negligence that
26 proximately caused Philip's death.

27 64. Fraternity Defendants have long known, or should have known, of the
28 unparalleled dangers associated with the bid night ritual, of hazing, alcohol abuse, and inept risk

1 and crisis management within theirs and other fraternal organizations.

2 65. Fraternity Defendants had available to them, possessed, or, in the absence of
3 recklessness, should have themselves performed or commissioned, the information and analyses
4 about the risks of misuse of alcohol and hazing, particularly in regard to bid, pledge, and
5 initiation-related activities and most particularly regarding the bid night rituals.

6 66. Fraternity Defendants knew for many years that their risk and crisis management
7 policies were not working because pursuant to those very policies, unpaid, untrained, under-
8 aged, and inexperienced college students with conflicted loyalties were appointed and relied
9 upon to make life and death decisions and manage risks, student housing, and crises far beyond
10 their experience, training and understanding.

11 67. Upon information and belief, for many years Fraternity Defendants knew of and
12 deliberately failed despite known risks to supervise or implement reasonable controls over, the
13 traditions of Beta Upsilon, including the bid night ritual, excess alcohol consumption, and
14 hazing, the types of activities that resulted in Philip's death.

15 68. Because it was reasonably foreseeable that their acts and omissions as alleged
16 herein posed a risk of serious harm, Fraternity Defendants' misconduct was not only reckless but
17 also taken in conscious disregard of the danger posed by their acts and omissions, justifying the
18 imposition of punitive damages.

19 WHEREFORE, Plaintiffs pray for relief as set forth below.

20 **SECOND CAUSE OF ACTION**
21 **(Survival and Wrongful Death)**

22 **VIOLATION OF MATT'S LAW, FRESNO SOCIAL HOST ORDINANCE, THE**
23 **STANDARDS FOR STUDENT CONDUCT, AND THE FRESNO STATE HANDBOOK**
24 **ALL DEFENDANTS**

25 69. The preceding allegations are re-alleged and incorporated herein.

26 70. Matt's Law makes it illegal to haze, which is defined as "any method of initiation
27 or preinitiation into a student organization or student body, whether or not the organization is
28 officially recognized by an educational institution, which is likely to cause serious bodily injury
to any former, current, or prospective student of any school, community college, college,

1 university, or other educational institution in this state.” Hazing is also prohibited under the
2 Standards for Student Conduct and the Fresno State Handbook.

3 71. Matt’s Law provides a private right of action against any organization to which
4 the student is seeking membership “whose agents, directors, trustees, managers, or officers
5 authorized, requested, commanded, participated in, or ratified the hazing.”

6 72. The conduct of the individual Defendants, members and officers of Theta Chi and
7 Beta Upsilon, as alleged herein constituted a “method of initiation or preinitiation” which was
8 likely to cause serious bodily injury, was hazing within the meaning of the statute, and was a
9 proximate cause of Philip’s death.

10 73. The individual Defendants who hazed Philip Dhanens were acting individually
11 and as agents or officers of Fraternity Defendants as their activities were in furtherance of the
12 pledges’ desire to gain membership into Theta Chi.

13 74. Defendants were all responsible persons with a right of possession in the Theta
14 Chi Fraternity House as defined by the Social Host Ordinance, Municipal Code of the City of
15 Fresno, Sec. 9-3001 *et seq.*

16 75. Defendants knowingly permitted, allowed, or hosted an event where underage
17 persons were present and alcoholic beverages were being consumed by underage persons,
18 violating the Social Host Ordinance, Municipal Code of the City of Fresno, Sec. 9-3005(a).

19 76. As a direct and proximate result of Defendants’ violation of Matt’s Law, Fresno’s
20 Social Host Ordinance, the Standards for Student Conduct, and the Fresno State Handbook,
21 Philip died, and his beneficiaries suffered and will suffer in the future financial support that
22 Philip would have contributed to the family during their life expectancy; the loss of gifts and
23 benefits that they would have expected to receive from Philip; funeral and burial expenses; the
24 reasonable value of household services that Philip would have provided; the loss of Philip’s love,
25 companionship, comfort, care, assistance, protection, affection, society, moral support, and the
26 loss of Philip’s training and guidance.

77. As a further direct and proximate result of Defendants' violation of Matt's Law, Fresno's Social Host Ordinance, the Standards for Student Conduct, and the Fresno State Handbook, the Estate of Philip Dhanens incurred medical expenses and lost earnings.

78. Defendants are jointly and severally liable for their violation of Matt's Law, Fresno's Social Host Ordinance, the Standards for Student Conduct, and the Fresno State Handbook that proximately caused Philip's death generally, and pursuant to the rules and regulations of the Standards for Student Conduct and the Fresno State Handbook which establish individual liability of Theta Chi's directors.

79. The Fresno State Handbook provides, in pertinent part, that “[s]tudent organizations are responsible for the actions of their members at functions sponsored by the organization.”

80. Before the events that are the subject of this Complaint, Fraternity Defendants knew or should have known that it was reasonably foreseeable that pledges of Beta Upsilon were at risk for being hazed within the meaning of Matt's Law, the Standards for Student Conduct, and the Fresno State Handbook.

81. Because it was reasonably foreseeable that a violation of Matt's Law, Fresno's Social Host Ordinance, the Standards for Student Conduct, and the Fresno State Handbook would occur, Fraternity Defendants' misconduct was not only reckless, but also taken in conscious disregard of the danger posed by their acts and omissions, justifying the imposition of punitive damages.

WHEREFORE, Plaintiffs pray for relief as set forth below.

THIRD CAUSE OF ACTION
(Survival and Wrongful Death)
NEGLIGENCE AND NEGLIGENCE PER SE (HAZING AND SOCIAL HOST)
ALL DEFENDANTS

82. The preceding allegations are re-alleged and incorporated herein.

83. Hazing is prohibited by Matt's Law, the Standards for Student Conduct, and the Fresno State Handbook.

84. Defendants had a legal duty not to haze Philip.

1 85. Defendants had a legal duty not to permit, allow, or host an event where alcoholic
2 beverages were being provided to or consumed by underage persons.

3 86. By engaging in the conduct alleged in this Complaint, the individual Defendants
4 breached their duty of care to Philip. Under Evidence Code section 669(a), that breach of duty is
5 established as a matter of law because:

6 (a) The individual Defendants' conduct violated Matt's Law, the rules,
7 regulations, policies of the Standards for Student Conduct and the rules, regulations and
8 policies set forth in the Fresno State Handbook, and Fresno's Social Host Ordinance;

9 (b) The individual Defendants' conduct proximately caused Philip's death;

10 (c) The individual Defendants' conduct that caused Philip's death is conduct
11 of the nature that Matt's Law, the Standards for Student Conduct policies and regulations,
12 the Fresno State Handbook, and Fresno's Social Host Ordinance were designed to
13 prevent; and

14 (d) Philip was a student and under the age of 21, and therefore one of the class
15 of persons for whose protection Matt's Law, the Standards for Student Conduct, the
16 Fresno State Handbook, and Fresno's Social Host Ordinance were adopted.

17 87. Fraternity Defendants knew or should have known that local chapter members
18 and officers engaged in the hazing of pledges during the bid night ritual, and the abuse of alcohol
19 during bid, pledge, and other initiation events, including provision of alcohol to minors and the
20 consumption of alcohol by minors, and that because this conduct was considered a traditional
21 part of attaining membership it was very likely to recur.

22 88. Upon information and belief, for many years Fraternity Defendants knew of and
23 deliberately failed despite the known risks to supervise or implement reasonable measures to
24 control hazing and the dangerous traditions at its chapters, including the provision of alcohol
25 during bid night rituals under circumstances constituting legal duress and likely to cause serious
26 bodily harm.

27 89. Defendants breached their legal duty not to haze Philip and are negligent *per se*.
28

1 90. Fraternity Defendants are liable for their own negligence *per se* and for the
2 negligence *per se* of their agents and officers, the individual Defendants, pursuant to the doctrine
3 of *respondeat superior*, because the individual Defendants were acting as agents of Fraternity
4 Defendants and within the scope of their agency at all relevant times, and/or because the
5 misconduct alleged is of the type to which *respondeat* liability attaches even if the agent was
6 acting outside the scope of the agency, and because Fraternity Defendants ratified the individual
7 fraternity member Defendants' misconduct.

8 91. Pursuant to the rules and regulations set forth in the Fresno State Handbook and
9 Matt's Law, Fraternity Defendants are liable for the actions of the individual Defendants who
10 authorized, requested, commanded, encouraged, participated in, ratified, or tolerated the hazing
11 of Philip and the individual directors of Theta Chi may be held individually liable for damages.

12 92. The Fresno State Handbook provides, in pertinent part, that "[s]tudent
13 organizations are responsible for the actions of their members at functions sponsored by the
14 organization."

15 93. All Defendants are "responsible persons" as defined by Fresno's Social Host
16 Ordinance, Municipal Code of the City of Fresno, Sec. 9-3004(g).

17 94. As a direct and proximate result of the Defendants' negligence *per se*, Philip died,
18 and his beneficiaries suffered and will suffer in the future financial support that Philip would
19 have contributed to the family during their life expectancy; the loss of gifts and benefits that they
20 would have expected to receive from Philip; funeral and burial expenses; the reasonable value of
21 household services that Philip would have provided; the loss of Philip's love, companionship,
22 comfort, care, assistance, protection, affection, society, moral support, and the loss of Philip's
23 training and guidance.

24 95. As a further direct and proximate result of the Defendants' negligence *per se*, the
25 Estate of Philip Dhanens incurred medical expenses and lost earnings.

26 96. Defendants are jointly and severally liable for their negligence *per se* that
27 proximately caused Philip's death.

1 and specifically to refrain from hazing under Matt's Law and under the Fresno State
2 Handbook.

3 (h) As members and officers, they assumed duties under the risk management
4 policies of Theta Chi to refrain from hazing pledges, and providing alcohol to them,
5 under the circumstances which form the basis of this Complaint.

6 101. Fraternity Defendants are liable for the individual Defendants' negligent acts and
7 omissions as alleged herein pursuant to the doctrine of *respondeat superior* because the
8 individual Defendants were acting as agents of Fraternity Defendants and within the scope of
9 their agency at all relevant times, and because the misconduct alleged is of the type to which
10 *respondeat* liability attaches even if the agent was acting outside the scope of the agency, and/or
11 because Fraternity Defendants ratified the individual Defendants' misconduct.

12 102. As a direct and proximate result of the Defendants' breach of their assumed
13 duties, Philip died, and his beneficiaries suffered and will suffer in the future financial support
14 that Philip would have contributed to the family during their life expectancy; the loss of gifts and
15 benefits that they would have expected to receive from Philip; funeral and burial expenses; the
16 reasonable value of household services that Philip would have provided; the loss of Philip's love,
17 companionship, comfort, care, assistance, protection, affection, society, moral support, and the
18 loss of Philip's training and guidance.

19 103. As a further direct and proximate result of the Defendants' breach of their
20 assumed duties, the Estate of Philip Dhanens incurred medical expenses and lost earnings.

21 WHEREFORE, Plaintiffs pray for relief as set forth below.

22 **FIFTH CAUSE OF ACTION**
23 **(Survival and Wrongful Death)**
24 **NEGLIGENCE/BREACH OF DUTY TO PREVENT HARM**
ALL DEFENDANTS

25 104. The preceding allegations are re-alleged and incorporated herein.

26 105. The individual Defendants knew or had reason to know that by their conduct, they
27 had caused harm to Philip so as to make him helpless and in a position of peril, and they
28 therefore owed Philip a duty to exercise reasonable care to prevent further harm.

1 106. The individual Defendants breached this duty by, *inter alia*:

2 (a) Failing to procure for Philip appropriate medical care and other care after
3 it became clear he was injured, intoxicated, helpless, or in need of medical attention and
4 he had told the fraternity members “no,” he was not alright;

5 (b) Dragging Philip from the Chapter Room to the “Drunk Room” rather than
6 proceed to a hospital or other medical facility;

7 (c) Abandoning Philip in the “Drunk Room” without getting him assistance or
8 medical care and attention;

9 (d) Unreasonably delaying a call to 911 or other emergency personnel;

10 (e) Subjecting Philip to amateur care from unqualified individuals, some of
11 whom were intoxicated; and

12 (f) Preventing others from obtaining the medical care Philip needed under the
13 circumstances by, among other reasons, placing Philip in a “Drunk Room” where his
14 need for immediate medical care would neither be detected nor responded to.

15 107. Fraternity Defendants are liable for the acts and omissions of the individual
16 Defendants’ negligent acts and omissions as alleged herein pursuant to the doctrine of
17 *respondeat superior* because the individual Defendants were acting as agents of Fraternity
18 Defendants and within the scope of their agency at all relevant times, and because the
19 misconduct alleged is of the type to which *respondeat* liability attaches even if the agent was
20 acting outside the scope of the agency, and because Fraternity Defendants ratified the individual
21 Defendants’ misconduct.

22 108. The Fresno State Handbook provides, in pertinent part, that “[s]tudent
23 organizations are responsible for the actions of their members at functions sponsored by the
24 organization.”

25 109. As a direct and proximate result of the Defendants’ breaches of their duty to
26 prevent harm, Philip died, and his beneficiaries suffered and will suffer in the future financial
27 support that Philip would have contributed to the family during their life expectancy; the loss of
28 gifts and benefits that they would have expected to receive from Philip; funeral and burial

1 expenses; the reasonable value of household services that Philip would have provided; the loss of
2 Philip's love, companionship, comfort, care, assistance, protection, affection, society, moral
3 support, and the loss of Philip's training and guidance.

4 110. As a further direct and proximate result of the Defendants' breaches of their duty
5 to prevent harm, the Estate of Philip Dhanens incurred medical expenses and lost earnings.

6 WHEREFORE, Plaintiffs pray for relief as set forth below.

7 **PRAYER**

8 WHEREFORE, Plaintiffs pray for relief as follows:

- 9 1. Compensatory damages in an amount to be proven at trial;
10 2. Punitive and exemplary damages pursuant to California Civil Code section 3294
11 and as permitted by law;
12 3. Costs and expenses;
13 4. Such other relief as the Court deems just and proper, including equitable relief.

14 DATED: March 13, 2013

KERR & WAGSTAFFE LLP

15
16 By 

Kelly A. Corcoran

17 Attorneys for Plaintiffs
18 PAUL J. DHANENS AND
19 DIANE M. DHANENS

20 **DEMAND FOR JURY TRIAL**

21 Plaintiffs hereby demand a jury trial.

22
23 DATED: March 13, 2013

KERR & WAGSTAFFE LLP

24
25 By 

Kelly A. Corcoran

26 Attorneys for Plaintiffs
27 PAUL J. DHANENS AND
28 DIANE M. DHANENS

EXHIBIT A

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, state bar number, and address): 661-324-9475		TELEPHONE AND FAX NOS.:	FOR COURT USE ONLY FILED KERN COUNTY FEB 27 2013 TERRY McNALLY, CLERK BY _____ DEPUTY ENDORSED
James R. Hulsy Hulsy and Hulsy Law Offices James R. Hulsy 090576 412 Truxtun Ave. Bakersfield, Ca. 93301			
ATTORNEY FOR (Name): Paul Dhanens and Diane Dhanens			
SUPERIOR COURT OF CALIFORNIA, COUNTY OF Kern			
STREET ADDRESS: 1215 Truxtun Ave.			
MAILING ADDRESS:			
CITY AND ZIP CODE: Bakersfield, Ca. 93301			
BRANCH NAME:			
ESTATE OF (Name): Philip Alexander Dhanens		DECEDENT	
ORDER FOR PROBATE ORDER <input type="checkbox"/> Executor APPOINTING <input type="checkbox"/> Administrator with Will Annexed <input type="checkbox"/> Administrator <input checked="" type="checkbox"/> Special Administrator <input type="checkbox"/> Order Authorizing Independent Administration of Estate <input type="checkbox"/> with full authority <input type="checkbox"/> with limited authority		CASE NUMBER:	S-1501 PB 62568
WARNING: THIS APPOINTMENT IS NOT EFFECTIVE UNTIL LETTERS HAVE ISSUED.			

1. Date of hearing: _____ Time: _____ Dept./Room: _____ Judge: _____

THE COURT FINDS

2. a. All notices required by law have been given.
 b. Decedent died on (date): 9/2/2012
 (1) ☒ a resident of the California county named above.
 (2) ☐ a nonresident of California and left an estate in the county named above.
 c. Decedent died
 (1) ☒ Intestate
 (2) ☐ testate
 and decedent's will dated: _____ and each codicil dated: _____
 was admitted to probate by Minute Order on (date): _____

THE COURT ORDERS

3. (Name): Paul Dhanens and Diane Dhanens
 is appointed **personal representative**:

- a. ☐ executor of the decedent's will
 b. ☐ administrator with will annexed
 c. ☐ administrator

- d. ☒ special administrator
 (1) ☐ with general powers
 (2) ☒ with special powers as specified in Attachment 3d(2)
 (3) ☐ without notice of hearing
 (4) ☒ letters will expire on (date): 5/20/13

and letters shall issue on qualification.

4. a. ☐ Full Authority is granted to administer the estate under the Independent Administration of Estates Act.
 b. ☒ Limited authority is granted to administer the estate under the Independent Administration of Estates Act (there is no authority, without court supervision, to (1) sell or exchange real property or (2) grant an option to purchase real property or (3) borrow money with the loan secured by an encumbrance upon real property).
 5. a. ☒ Bond is not required.
 b. ☐ Bond is fixed at: \$ _____ to be furnished by an authorized surety company or as otherwise provided by law.
 c. ☐ Deposits of: \$ _____ are ordered to be placed in a blocked account at (specify institution and location): _____
 and receipts shall be filed. No withdrawals shall be made without a court order. ☐ Additional orders in Attachment 5c.
 d. ☐ The personal representative is not authorized to take possession of money or any other property without a specific court order.
 6. ☐ (Name): _____ is appointed probate referee.

Date: _____

JUDGE OF THE SUPERIOR COURT

7. Number of pages attached: 1

☒ SIGNATURE FOLLOWS LAST ATTACHMENT

ORDER FOR PROBATE

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Solutions
& Plus

Probate Code, §§ 8008, 8400

EXHIBIT A

Estate of Philip Alexander Dhanens

Case No. S-1501 PB 62568

Authority to file a civil complaint for wrongful death for
the death of the decedent.

DATE:

FEB 28 2013

RALPH WM WYATT

PROBATE COMMISSIONER OF
THE SUPERIOR COURT

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, state bar number, and address): 661-324-9475		TELEPHONE AND FAX NOS.	FOR COURT USE ONLY
James R. Hulsey Hulsey and Hulsey Law Offices James R. Hulsey 090576 412 Truxtun Ave. Bakersfield, Ca. 93301			FILED KERN COUNTY FEB 28 2013 TERRY McNALLY, CLERK BY <u>Km</u> DEPUTY
ATTORNEY FOR (Name): Paul Dhanens and Diane Dhanens			
SUPERIOR COURT OF CALIFORNIA, COUNTY OF Kern			
STREET ADDRESS: 1215 Truxtun Ave. MAILING ADDRESS: CITY AND ZIP CODE: Bakersfield, Ca. 93301 BRANCH NAME:			
ESTATE OF (Name): Philip Alexander Dhanens		DECEDENT	
LETTERS		CASE NUMBER:	
<input type="checkbox"/> TESTAMENTARY <input type="checkbox"/> OF ADMINISTRATION WITH WILL ANNEXED		<input type="checkbox"/> OF ADMINISTRATION <input checked="" type="checkbox"/> SPECIAL ADMINISTRATION	
		S-1501 PB 62568	

LETTERS

1. ☐ The last will of the decedent named above having been proved, the court appoints (name):

- a. ☐ executor.
b. ☐ administrator with will annexed.

2. ☒ The court appoints (name):

Paul Dhanens and Diane Dhanens

- a. ☐ administrator of the decedent's estate.
b. ☒ special administrator of decedent's estate
(1) ☒ with the special powers specified in the Order for Probate.
(2) ☐ with the powers of a general administrator.
(3) ☒ letters will expire on (date): 5-28-13

3. ☐ The personal representative is authorized to administer the estate under the Independent Administration of Estates Act ☐ with full authority ☐ with limited authority (no authority, without court supervision, to (1) sell or exchange real property or (2) grant an option to purchase real property or (3) borrow money with the loan secured by an encumbrance upon real property).

4. ☐ The personal representative is not authorized to take possession of money or any other property without a specific court order.

WITNESS, clerk of the court, with seal of the court affixed.



Date: FEB 28 2013
Clerk, by TERRY McNALLY
Terry McNally
(DEPUTY)

Form Approved by the
Judicial Council of California
DE-150 (Rev. January 1, 1998)
Mandatory Use [1/1/2000]

LETTERS
(Probate)

AFFIRMATION

1. ☐ PUBLIC ADMINISTRATOR: No affirmation required (Prob. Code, § 7621(c)).
2. ☒ INDIVIDUAL: I solemnly affirm that I will perform the duties of personal representative according to law.
3. ☐ INSTITUTIONAL FIDUCIARY (name):

I solemnly affirm that the institution will perform the duties of personal representative according to law. I make this affirmation for myself as an individual and on behalf of the institution as an officer.
(Name and title):

4. Executed on (date): 2-20-2013
at (place): Bakersfield, California.

Diane Dhanens
(SIGNATURE)

CERTIFICATION

I certify that this document is a correct copy of the original on file in my office and the letters issued the personal representative appointed above have not been revoked, annulled, or set aside, and are still in full force and effect.



Date: MAR 11 2013
Clerk, by TERRY McNALLY
Terry McNally
(DEPUTY)

Probate Code, §§ 1001, 8403,
8405, 8544, 8545;
Code of Civil Procedure, § 2015.6

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& Plus